



Senate Committee On  
**AGRICULTURE**

Nancy Argenziano, Chair  
Anthony C. "Tony" Hill, Sr., Vice Chair

**Meeting Packet**

Tuesday, April 13, 2004

3:15 p.m. – 4:45 p.m.

301 Capitol

*Jerry Thomas Meeting Room*

***(Please bring this packet to the committee meeting.  
Duplicate materials will not be available.)***

# EXPANDED AGENDA

## COMMITTEE ON AGRICULTURE

Senator Argenziano, CHAIR

Senator Hill, VICE-CHAIR

DATE: Tuesday, April 13, 2004

TIME: 3:15 p.m. -- 4:45 p.m.

PLACE: The Jerry Thomas Committee Room, 301 Capitol

(MEMBERS: Senators Alexander, Bennett, Bullard, Crist and Siplin)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 1314 Commerce, Economic Opportunities, and Consumer Services / Garcia (Compare H 0571, CS/CS/S 1408)	Consumer Services; creates consumer education pilot program within Agric. & Consumer Services Dept. to educate secondary & postsecondary students about issues concerning consumer protection; requires dept. to prepare report & submit recommendations to Governor & Legislature concerning state's "no sales solicitation calls" listing; requires telephone solicitor to identify himself or herself when calling business, etc. Amends FS.	
		CM 03/16/04 Temporarily postponed CM 03/22/04 CS AG 04/13/04 TR FT	
2	SB 3058 Aronberg (Similar H 1173)	Purchase of Dogs & Cats; requires that any cat or dog offered for sale be accompanied by animal-purchase disclosure; prohibits pet dealer from possessing dog or cat younger than certain age; provides that proper veterinary care of animal returned due to illness or disease may include euthanasia; limits reimbursement for veterinary costs; requires that pet dealer post notice indicating where dog or cat was bred or brokered, etc. Amends 828.29.	
		AG 04/13/04 RI CM	
3	SB 1418 Aronberg et al (Compare H 1637)	Cruelty to Animals/Bovines; provides definition; provides that it is third-degree felony for person to intentionally drag or fell by tail a bovine animal in organized sports exhibition. Amends 828.121.	
		AG 04/13/04 CJ	
4	CS/SB 1394 Health, Aging, and Long-Term Care / Smith (Similar 1ST ENG/H 0333)	Civil Liability/Consumption/Food; provides to certain entities immunity from civil liability for personal injury or wrongful death based upon long-term consumption of certain foods or nonalcoholic beverages under certain circumstances; provides applicability; provides limitation on immunity. Creates 768.37.	
		HC 02/17/04 CS JU 03/09/04 FAVORABLE WITH AMEND RI 03/31/04 FAVORABLE AG 04/13/04	1

E X P A N D E D      A G E N D A

COMMITTEE ON AGRICULTURE

DATE: Tuesday, April 13, 2004

TIME: 3:15 p.m. -- 4:45 p.m.

---

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
-----	----------------------------	--	---------------------

---

	Presentation regarding the impact of rising gasoline and other fuel prices on agriculture production.		
--	---	--	--

---

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1314

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and Senator Garcia

SUBJECT: Consumer Services

DATE: April 6, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Maclure	CM	Fav/CS
2.	Akhavain <i>JA</i>	Poole <i>[Signature]</i>	AG	
3.			TR	
4.			FT	
5.				
6.				

## I. Summary:

Committee Substitute for Senate Bill 1314 creates and amends several provisions relating to consumer services, including:

- **Consumer Education Pilot Program:** Creating a consumer education pilot program in four regions of the state to better educate secondary and postsecondary students on consumer issues.
- **“No Sales Solicitation Calls” Report:** Requiring the Department of Agriculture and Consumer Services to issue a report to the Governor and the Legislature by December 1, 2004, regarding the continued viability of the state’s “no sales solicitation calls” listing and recommendations on whether to continue the program as it currently exists.
- **Business Subscriptions to “No Sales Solicitation Calls” Listing:** Providing a business the option of subscribing a business telephone number to the state’s “no sales solicitation calls” listing.
- **Protection of Seniors Citizens and Handicapped Persons:** Authorizing increased administrative fines and civil penalties for violations of the ballroom dance studio law, the pawnbroking law, and the motor vehicle repair law when those violations are committed against senior citizens and handicapped persons.
- **Gasoline and Oil Inspection:** Removing a county-by-county breakdown reporting requirement for petroleum companies when submitting the gasoline and oil inspection fee.
- **Business Opportunities:** Clarifying when a sale or lease of a business opportunity occurs by stating that certain services, such as a marketing and sales program, may be provided, *either contemporaneously at the time of sale or lease or at a future time*, by a seller of a business opportunity to a purchaser.

- **Motor Vehicle Repair Shops:** Removing an out-of-date registration procedure for motor vehicle repair shops and providing an appropriation to an authorized Department of Agriculture and Consumer Services program that was intended to provide financial assistance to motor vehicle repair shop employees wishing to take courses in motor vehicle repair.
- **Sellers of Travel:** Removing the requirement for a seller of travel or an independent agent acting on behalf of a seller of travel to provide social security numbers when registering with the Department of Agriculture and Consumer Services, and requiring an independent agent to provide copies of any contracts the agent has with sellers of travel when registering with the department.
- **Consumer Services:** Clarifying when the Department of Agriculture and Consumer Services may assist consumers with complaints against unregulated entities and providing seven full-time-equivalent positions to the department for assisting consumers who have complaints against unregulated entities.
- **Amusement Rides:** Clarifying when an amusement ride owner must request an inspection certificate when moving a permanent ride within a permanent amusement park and clarifying procedures for when permanent and temporary amusement ride owners must request inspections for their amusement rides.
- **Identity Theft:** Creating the crime of identity theft against a deceased person by revising the definition of “individual” to include a deceased person and establishing penalties.
- **Game Promotions:** Clarifying the definition of an operator of a game promotion in connection with the sale of a consumer product or service and clarifying the time period for submitting certain reports.
- **Health-Related Discount Cards:** Requiring the registration of health-related discount card providers with the Department of Financial Services before a provider may conduct business and providing penalties for failure to register or for defrauding consumers.

The committee substitute substantially amends the following sections of the Florida Statutes: 501.059, 501.143, 525.09, 539.001, 559.801, 559.920, 559.921, 559.928, 559.934, 570.544, 616.242, 817.568, and 849.094.

The committee substitute also reenacts portions of section 921.0022, Florida Statutes, and creates unnumbered sections of the Florida Statutes.

## II. Present Situation:

The present situation of each program or activity addressed by the committee substitute is discussed below in the Effect of Proposed Changes section of this staff analysis.

## III. Effect of Proposed Changes:

### Consumer Education Pilot Program (Section 1 and Section 19)

**Present Situation:** The Division of Consumer Services of the Department of Agriculture and Consumer Services functions to assist consumers with information, protection, and complaints in the industries regulated by the Division. However, the Division does not have authority to provide legal advice. For those industries that the Division does not regulate, it is the Division’s

policy to make every possible effort to assist consumers by directing them to the appropriate state agency. The Division's website contains links to consumer news, consumer resources, and links for filing complaints.<sup>1</sup> One of the specific powers of the division is to "[a]ssist, develop, and conduct programs of consumer education and consumer information through publications and other informational and educational material prepared for dissemination to the public, in order to increase the competence of consumers."<sup>2</sup>

***Effect of Proposed Changes:*** The committee substitute creates a consumer education pilot program to be conducted in at least four regions of the state by the department during the 2004-2005 fiscal year to educate secondary and postsecondary students about consumer protection issues. The purpose of the program is to assist students in developing skills to make informed choices as consumers, as well as in developing an understanding of their rights and responsibilities as consumers. The department must report on the activities of the pilot program and whether to continue the program to the President of the Senate and the Speaker of the House of Representatives by December 1, 2005. The pilot program may address topics, including, but not limited to:

- Purchasing an automobile;
- Credit cards and other consumer debt;
- Landlord and tenant relations;
- Health studios;
- Home employment opportunities;
- Identity theft; and
- Credit reporting and scoring.

While collaborating with other state organizations, the department may use, but is not limited to, the following methods to involve students in the pilot program:

- School site visits;
- Public service announcements;
- Contests in which students participate;
- Seminars or similar training sessions; or
- Internet-based applications.

\$100,000 is appropriated from the General Revenue Fund to the department to implement the program during the 2004-2005 fiscal year.

#### **"No Sales Solicitation Calls" Listing (Section 2)**

***Present Situation:*** Florida's "no sales solicitation calls" law, s. 501.059, F.S., established in 1990, provides Florida consumers who pay an initial \$10 per telephone number the opportunity to place a residential, mobile, or pager telephone number on the "no sales solicitation calls"

---

<sup>1</sup> Department of Agriculture and Consumer Services, Division of Consumer Services, Homepage, *available at* <http://www.800helpfla.com> (last visited March 13, 2004).

<sup>2</sup> Section 570.544(2)(g), F.S.

listing, administered by the Department of Agriculture and Consumer Services.<sup>3</sup> The law prohibits most telephone solicitors from calling consumers who have registered their telephone numbers with the state to sell items normally used for personal, family, or household purposes. The law does not provide the option to a business to subscribe a business telephone number to the listing. An annual renewal subscription fee of \$5 per telephone number is required each year thereafter.<sup>4</sup> Consumers may subscribe up to five years in advance. Consumers may subscribe by calling a toll-free telephone number to request an application, or they may download the application from the department's website and mail it to the department with the appropriate fee.

In January 2003, the Federal Trade Commission (FTC) revised its Telemarketing Sales Rule (TSR) to create a national Do-Not-Call (DNC) registry that prohibits calls to a consumer registered on the registry.<sup>5</sup> On July 7, 2003, consumers were able to register with the FTC on the Internet and by telephone a residential or mobile telephone number.<sup>6</sup> As of October 21, 2003, 53.7 million consumers had signed up for the federal DNC registry. Registration to the federal DNC registry is free and is effective for five years. The federal DNC registry does not provide the option for a business to subscribe business telephone numbers.

The Department of Agriculture and Consumer Services issued a preliminary report on March 1, 2004, regarding the current status of the state's "no sales solicitation calls" listing. The report found for the first seven months of the 2003-2004 fiscal year, as compared to the 2002-2003 fiscal year, a 44-percent decrease in initial subscriptions, a 13.6-percent decrease in subscription renewals, an increase in the purchases of the listing by telephone solicitors, and a 27-percent decrease in complaints by consumers. Although the federal DNC program and the associated litigation have caused some uncertainty over the last seven months, the department stated it believes Florida's citizens value the service provided by the department through the listing and that an 87-percent renewal rate indicated the value of the listing to citizens in maintaining their privacy.<sup>7</sup>

**Effect of Proposed Changes:** The committee substitute requires the Department of Agriculture and Consumer Services to prepare and submit a report on the state's "no sales solicitation calls" listing under s. 501.059, F.S., to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2004. The report required by the committee substitute is based upon the findings and recommendations of Interim Project Report 2004-117 by the Committee on Commerce, Economic Opportunities, and Consumer Services. The interim project was conducted to explore the effects of the new, free federal Do-Not-Call (DNC) program on Florida's program, because the federal DNC program envisions working with states on certain aspects of the federal program, such as enforcement, and because of the legal issues raised by the federal litigation.

---

<sup>3</sup> Section 501.059(3)(a), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> See *Telemarketing Sales Rule, Final Amended Rule*, Federal Trade Commission, 68 Fed. Reg. 4580 (Jan. 29, 2003) (*FTC Order*); authorized under 47 U.S.C. s. 227 (2000).

<sup>6</sup> Press Release, FTC and FCC, "National Do Not Call Registry Opens," (June 27, 2003), available at <http://www.ftc.gov/opa/2003/06/donotcall.htm> (last visited November 25, 2003).

<sup>7</sup> Department of Agriculture and Consumer Services, *Interim Report on Effect of Federal Do Not Call Registry on Florida's Do Not Call Law*, at 3-5, 8 (March 1, 2004).

The committee substitute requires the department to provide certain information gathered between November 1, 2003, and November 1, 2004, and compare it to same time period the year before. The committee substitute requires that the following data be collected and reported:

- The number of consumer initial subscriptions and renewal subscriptions to the state listing, and the associated fees collected, per month, with an explanation of any factors that affected consumer subscriptions during the evaluation period;
- The number of purchases of the state listing by solicitors and the amount of fees generated from the purchases;
- The number of complaints received by the department related to the state listing per month; and
- The number of enforcement actions taken by the department per month, the amount of fines imposed per month, and a description of any settlements reached.

The committee substitute also requires the department to provide recommendations on the continued viability of the state's listing. The items to be reported include:

- The status of the federal litigation and an evaluation of the litigation's effect on the department's management of the state listing.
- A recommendation of whether it is feasible to continue operation of the state listing, based upon, among other factors, the effects of the federal program, the associated litigation, and the amount of revenue collected from subscriptions, renewals, solicitor fees, and enforcement actions.
- If the report recommends the continued operation of the state listing, the report must also include a recommendation of, and the rationale for, the resources necessary for the department to continue to manage the listing at its current level of consumer protection.
- A description of how the federal program's preemption of less restrictive state exemptions affects any exemptions allowed under the state's "no sales solicitation calls" listing and a recommendation of legislative action, if any, that may be necessary to address this issue.
- A description of any activities by the department related to enforcement of the federal DNC program.
- The number of listings of Florida consumers registered with the federal DNC program that have been downloaded by the department and subscribed to the state listing, as well as the number of listings uploaded to the federal program.
- If Florida consumers registered with the commission's DNC program have been downloaded to the state listing, an evaluation of whether those consumers have filed complaints with the department, and, if so, the nature of those complaints and what action was taken, if any, by the department to address those complaints.

The committee substitute also gives the department discretion to include any additional information the department believes may assist the Legislature in evaluating the state's listing and any potential changes to the state listing.



**Business Telephone Number Subscriptions to “No Sales Solicitation Calls” Listing (Section 3)**

**Present Situation:** See the *Present Situation* section for “No Sales Solicitation Calls” Listing, above.

**Effect of Proposed Changes:** The committee substitute revises s. 501.059, F.S., to allow a business to subscribe to the state’s “no sales solicitation calls” listing. Specifically, the committee substitute adds “business” to the types of telephone numbers that may be subscribed to the listing. The committee substitute prohibits a telephone solicitor from contacting a business if the business’s telephone number appears on the quarterly listing of the Department of Agriculture and Consumer Services. Also, a telephone solicitor may not include a business telephone number as part of a sale of consumer information if the business telephone number appears on the department’s listing. The committee substitute also revises the definition of “consumer” to incorporate the statutory definition of person found in s. 1.01, F.S. The definition of person includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Additionally, the committee substitute makes changes to several definitions in the statute, including “telephonic sales call,” “consumer goods or services,” and “unsolicited telephonic sales call,” to conform those definitions to the change made in the definition of consumer and the expansion of the program to include business numbers. The change in the definition of “consumer goods or services” provides that goods or services that may be offered for sale now include goods or services for business purposes. The committee substitute also requires a telephone solicitor to identify himself or herself when calling a business telephone number.

**Protection of Senior Citizens and Handicapped Persons (Section 4, Section 6, and Section 9)**

**Present Situation:** Section 501.2077, F.S., of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) provides authority for an agency to impose a civil penalty of not more than \$15,000 for violations of FDUTPA when the violation is committed against a senior citizen or a handicapped person. A senior citizen means “a person who is 60 years of age or older” and a handicapped person means “any person who has a mental or educational impairment which substantially limits one or more major life activities.”<sup>8</sup>

**Effect of Proposed Changes:** The committee substitute provides authority to the Department of Agriculture and Consumer Services to impose an administrative fine or civil penalty not to exceed \$15,000 for a violation of the ballroom dance studio law, the pawnbroking law, or the motor vehicle repair shop law in the case of a violation against a senior citizen or a handicapped person.

**Gasoline and Oil Inspection (Section 5)**

**Present Situation:** Under ch. 525, F.S., Gasoline and Oil Inspection, the Department of Agriculture and Consumer Services is required to inspect, test, and analyze petroleum fuels to

---

<sup>8</sup> Section 501.2077(1)(a) & (b), F.S.

ensure the quality of fuel delivered to consumers in this state. To defray the costs of the inspection, the department charges an inspection fee of one-eighth cent per gallon on all gasoline, kerosene, and #1 fuel oil.<sup>9</sup> When remitting this fee to the department, a petroleum company is required to provide a detailed report showing the number of gallons of gasoline, kerosene, or fuel oil sold and delivered in each county.<sup>10</sup>

***Effect of Proposed Changes:*** The committee substitute removes the requirement in s. 525.09(3), F.S., for a petroleum company to report the amount of gasoline, kerosene, or #1 fuel oil delivered to each county when remitting the gasoline and petroleum inspection fee to the department. The company must still report the total amount of petroleum products delivered. According to the department, the information regarding the amount delivered to each county is not used by the department or any other agency and requiring the information creates an unnecessary burden on the industry.

### **Sale of Business Opportunities (Section 7)**

***Present Situation:*** The Department of Agriculture and Consumer Services regulates the sale or lease of business opportunities under part VIII of ch. 559, F.S. A business opportunity means the “sale or lease of any products, equipment, supplies, or services which are sold or leased to a purchaser to enable the purchaser to start a business for which the purchaser is required to pay an initial fee or sum of money which exceeds \$500 to the seller, and in which the seller represents:

1. That the seller or person or entity affiliated with or referred by the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, currency or card operated equipment, or other similar devices or currency-operated amusement machines or devices on premises neither owned nor leased by the purchaser or seller;
2. That the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using in whole or in part the supplies, services, or chattels sold to the purchaser;
3. That the seller guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid or rent charged for the business opportunity or that the seller will refund all or part of the price paid or rent charged for the business opportunity, or will repurchase any of the products, equipment, supplies, or chattels supplied by the seller, if the purchaser is unsatisfied with the business opportunity; or
4. That the seller will provide a sales program or marketing program that will enable the purchaser to derive income from the business opportunity, except that this paragraph does not apply to the sale of a sales program or marketing program made in conjunction with the licensing of a trademark or service mark that is registered under the

---

<sup>9</sup> Section 525.09(1), F.S.

<sup>10</sup> *Id.* at (3).

laws of any state or of the United States if the seller requires use of the trademark or service mark in the sales agreement.”<sup>11</sup>

**Effect of Proposed Changes:** By revising the definition of the sale or lease of a business opportunity in s. 559.801, F.S., the committee substitute establishes when the sale or lease of a business opportunity occurs. The committee substitute provides that a sale or lease of a business opportunity occurs when, among other things, a seller promises to provide, either contemporaneously at the time of sale or lease or at a future time, locations of vending machines or similar devices where the purchaser may sell the products purchased from the seller; when a seller promises to purchase, either contemporaneously at the time of sale or lease or at a future time, any or all of the products made from the items sold to the purchaser by the seller; and when a seller promises to provide, either contemporaneously at the time of sale or lease or at a future time, a sales or marketing program that will enable the purchaser to derive income from the business opportunity. The department has stated that by clearly indicating when the items listed above may be provided, i.e., *either contemporaneously at the time of sale or lease or at a future time*, the committee substitute clarifies when a sale or lease of a business opportunity occurs.

### **Motor Vehicle Repair Shops (Section 8 and Section 18)**

**Present Situation:** The Department of Agriculture and Consumer Services regulates motor vehicle repair shops under part IX of ch. 559, F.S. Prior to conducting business as a motor vehicle repair shop, a person must first register with the department. The application for registration must include at least the following:

- The name of the applicant.
- The name under which the applicant is doing business.
- The business address at which the applicant performs repair work or, in the case of a mobile motor vehicle repair shop, the home address of the owner, if different from the business address.
- Copies of all licenses, permits, and certifications obtained by the applicant or employees of the applicant.
- Number of employees which the applicant intends to employ or which are currently employed.<sup>12</sup>

The department charges a fee based upon the number of employees on a per-year basis as follows:

- If the place of business has 1 to 5 employees: \$50
- If the place of business has 6 to 10 employees: \$150
- If the place of business has 11 or more employees: \$300<sup>13</sup>

Section 559.920, F.S., sets out for motor vehicle repair shops and their employees what are unlawful acts and practices. Some of the unlawful acts and practices include engaging or

<sup>11</sup> Section 559.801(1)(a), F.S.

<sup>12</sup> Section 559.904(1)(a)-(e), F.S.

<sup>13</sup> Section 559.904(3)(a)-(c), F.S.

attempting to engage in repair work for compensation without first being registered with or having submitted an affidavit of exemption to the department, making or charging for repairs that have not been expressly or impliedly authorized by the customer, misrepresenting that repairs have been made to a motor vehicle, and misrepresenting that certain parts and repairs are necessary to repair a vehicle.<sup>14</sup>

Section 559.922, F.S., provides that the department is authorized to establish by rule “a program to provide financial assistance for individuals to undertake technical training or courses of study in motor vehicle repair.” However, the department reports that this program has never been funded.

**Effect of Proposed Changes:** The committee substitute removes language in s. 559.920, F.S., unlawful acts and practices, referencing an affidavit of exemption that may be filed in lieu of registering with the department. According to the department, the phrase “affidavit of exemption” is no longer applicable and became obsolete several years ago when the department revised its registration procedures. The committee substitute also provides the department with the sum of \$100,000 for the purpose of providing financial assistance for individuals to undertake technical training or courses of study in motor vehicle repair as provided in s. 559.922, F.S., during the 2004-2005 fiscal year.

#### **Sellers of Travel (Section 10 and Section 11)**

**Present Situation:** The Department of Agriculture and Consumer Services oversees sellers of travel through part XI of ch. 559, F.S., which requires them to register annually. When a seller of travel registers with the department, a registrant must provide to the department a number of items including, among other items, the registrant’s legal business or trade name, mailing address, and business locations, and the full names, addresses, telephone numbers, and social security numbers of its owners or corporate officers and directors and the Florida agent of the corporation. The registration fee is \$300 per year. An independent agent acting on behalf of a seller of travel must also register annually with the department before engaging in business. An independent agent must provide certain information in an affidavit to the department including the independent agent’s full name, legal business or trade name, mailing address, telephone number, and social security number, and the name or names and addresses of each seller of travel represented by the independent agent.<sup>15</sup>

**Effect of Proposed Changes:** The committee substitute removes the requirement in subsections (1) and (3) of s. 559.928, F.S., for a seller of travel or an independent agent acting on behalf of a seller of travel to provide social security numbers either for the owner or for the corporate officers and directors and the Florida agent of the corporation when registering with the department. The department reports that it does not need the social security numbers for sellers of travel or independent agents. Further, the committee substitute adds a requirement for an independent agent to supply a copy of any contracts the independent agent has with a seller of travel when registering with the department. The committee substitute also revises the language in s. 559.934, F.S., to clearly reference that a violation of the sellers of travel provisions is also a

---

<sup>14</sup> Section 559.920(1)-(4), F.S.

<sup>15</sup> Section 559.928(1)-(3), F.S.

violation of the provisions of the Florida Deceptive and Unfair Trade Practices Act, ss. 501.201-501.213, F.S., and any rules adopted thereunder.

### **Complaints and Unregulated Entities (Section 12 and Section 20)**

**Present Situation:** The Division of Consumer Services within the Department of Agriculture and Consumer Services is the state's clearinghouse for consumer information, protection, and complaints. The division is authorized under s. 570.544, F.S., to, among other things, assist consumers through consumer studies, consumer education programs, and by offering conferences related to consumer services to consumers. In Special Session A, the division's authority to assist the public with complaints regarding unregulated entities was removed by the fiscal year 2003-2004 budget implementing bill for one year. The budget also eliminated seven full-time-equivalent (FTE) positions used to support this activity. However, this authority will revert back at the end of this fiscal year, and the department has requested that if the division is required to assist consumers with unregulated complaints, the division's seven FTE positions be returned and funded.

**Effect of Proposed Changes:** The committee substitute clarifies that, if no agency exists *to which the division may transmit a complaint or grievance*, the division may assist the consumer in seeking a settlement of the complaint. The committee substitute also makes it a duty of the division to make reports and offer recommendations to the Commissioner of Agriculture for submission to the Legislature on any changes in statute, administrative law, or other law changes that may be necessary based on an analysis of complaints received by the division in unregulated areas. The committee substitute also provides \$100,000 to the Department of Agriculture and Consumer Services for marketing to the public the department's complaint-assistance services, and \$255,391 for seven additional full-time-equivalent positions for the Division of Consumer Services to support administration of unregulated complaints.

### **Amusement Rides (Section 13)**

**Present Situation:** Florida law, in part II of ch. 616, F.S., requires that each permanent amusement ride be inspected by the Department of Agriculture and Consumer Services semiannually and receive an inspection certificate, and that each temporary amusement ride be inspected each time the ride is set up or moved to a new location.<sup>16</sup> Current law is not clear in the situation in which a previously inspected permanent ride is taken down and relocated within a permanent amusement park.

Additionally, the statute requires that ride owners give the department advance notice of their need for an inspection. When providing advance notice, the owner must disclose the date of first intended use and planned opening date. The information is used by the department to plan and schedule inspections.<sup>17</sup>

**Effect of Proposed Changes:** The committee substitute clarifies s. 616.242(7), F.S., to state that a previously inspected permanent amusement ride must be reinspected and issued a new

---

<sup>16</sup> Section 616.242(7)(a), F.S.

<sup>17</sup> *Id.* at (7)(b)-(d).

inspection certificate when that ride is relocated within a permanent amusement park. When requesting a department inspection, an owner of an amusement ride must provide, among other items, the requested inspection date, the date of first intended use or planned opening date, and the date of arrival on site. Additionally, when a temporary amusement ride is set up or moved to a new location, the owner must provide the requested inspection date. For permanent amusement rides, the request for inspection must be received at least 15 days before the requested inspection date or at least 15 days before the expiration of the prior inspection certificate. For a temporary amusement ride, the request for inspection must be received for each time the amusement ride is set up or moved to a new location at least 14 days before the requested inspection date.

### **Criminal Use of Personal Identification Information (Section 14)**

**Present Situation:** “Identity theft or identity fraud ... is the criminal act of taking a victim’s identity for the purpose of obtaining credit, credit cards from banks and/or retailers, stealing money from the victim’s existing accounts, applying for loans in the victim’s name, establishing accounts with utility companies, leasing automobiles and residences, filing bankruptcy, and/or even obtaining employment.”<sup>18</sup> Section 817.568, F.S., provides for the crime of identity theft and establishes increasing levels of penalties depending upon the amount of the fraud perpetrated or the number of identities stolen. “Any person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual’s consent, commits the offense of fraudulent use of personal identification information.”<sup>19</sup>

**Effect of Proposed Changes:** The committee substitute creates the crime of identity theft of a deceased person’s identity by revising the definition of “individual” to include a deceased person. The committee substitute creates increasing levels of penalties depending upon the number of deceased individuals’ identities stolen or the amount stolen from a deceased person. To avoid prosecution, the committee substitute requires a person to obtain the consent of the deceased person’s estate before using the deceased person’s personal identification information.

### **Game Promotions in Connection with Sale of Consumer Products or Services (Section 15)**

**Present Situation:** An additional area of regulatory oversight for the Department of Agriculture and Consumer Services is game promotions in connection with the sale of consumer products or services under s. 849.094, F.S. Game promotion means, but is not limited to, “a contest, game of chance, or gift enterprise, conducted within or throughout the state and other states in connection with the sale of consumer products or services, and in which the elements of chance and prize are present.” This definition does not apply to bingo games. An operator means “any person, firm, corporation, or association or agent or employee thereof who promotes, operates, or conducts a game promotion.” This definition does not apply to any charitable nonprofit organization.<sup>20</sup> If a game promotion operator plans to offer a game promotion in which the total announced value of the prizes offered is greater than \$5,000, the operator must file with the department a

<sup>18</sup> Florida Attorney General, About Identity Theft Crimes, *available at* <http://myfloridalegal.com/pages.nsf/Main/932BC47213C29D3385256DBB0048479D?OpenDocument> (last visited March 13, 2004).

<sup>19</sup> Section 817.568(2)(a), F.S.

<sup>20</sup> Section 849.094(1)(a) & (b), F.S.

copy of the rules and regulations of the game promotion and a list of the prizes and prize categories offered at least seven days prior to the start of the game promotion with a filing fee of \$100.<sup>21</sup> Once a game promotion has been completed, the game promotion operator must file a certified list of the names and addresses of the winners who have won prizes with a value of more than \$25 and the dates when the prizes were won within 60 days after the winners have been finally determined. The game promoter must provide the list for free to anyone who requests it or may publish the list in a Florida newspaper within 60 days of when the winners were determined and must provide the department with a certified copy of the publication. All winning entries must be held by the game promotion operator for 90 days after the close of the game.<sup>22</sup>

**Effect of Proposed Changes:** The committee substitute clarifies the definition of “operator” in s. 849.094(1)(b), F.S., to mean any person, firm corporation, or association *on whose behalf a game promotion is conducted*, except any charitable nonprofit organization. The committee substitute also raises the filing fee to \$150 from \$100 for game promotions with a prize total greater than \$5,000. Additionally, the committee substitute revises the prize value amount, to \$100 from \$25, for when a game promotion operator must report the winners of a game promotion to the department. The committee substitute also adds that if the operator determines there is no winner, the operator must provide written notice that there was no winner to the department within 60 calendar days of that determination. Also, the committee substitute revises the time periods for complying with various reporting requirements to the department to use *calendar* days for measuring the time for reporting.

### **Criminal Punishment Code (Section 16)**

**Present Situation:** The criminal punishment code, under s. 921.0022, F.S., provides the offense-severity ranking chart for various crimes established in the Florida Statutes. When a person is charged with one of these crimes, what level of felony a person is charged with is set out in this chart.

**Effect of Proposed Changes:** The committee substitute reenacts the criminal punishment code in s. 921.0022, F.S., to capture the changes made in the committee substitute to s. 817.568, F.S., governing the crime of identity theft.

### **Health-Related Discount Cards (Section 17)**

**Present Situation:** Health-related medical discount cards are not health insurance. Because these programs are not health insurance, the companies and their marketing representatives are not regulated by the Department of Financial Services. Consumers are often required to pay a monthly fee of \$20 to \$100 before getting access to savings. Discount card programs offer only a reduction in the actual cost of prescriptions or medical services. Many plans require advance notice of utilization of discounts in order to honor them. Some plans offer discounts only on certain drugs.<sup>23</sup>

---

<sup>21</sup> *Id.* at (3).

<sup>22</sup> *Id.* at (5).

<sup>23</sup> Department of Financial Services, “Gallagher Offers Warning on Medical Discount Cards,” February 9, 2004, *available at* <http://www.fldfs.com/pressoffice/newsletter/newsletter%5Ffeb0904alt1.htm> (last visited March 13, 2004).

***Effect of Proposed Changes:*** The committee substitute provides that a person may not sell, market, promote, advertise, or distribute a card or other purchasing mechanism or device that is not insurance that purports to offer discounts or access to discounts from a health care provider for health-related purchases or from a pharmacy for purchases of prescription drugs unless:

- The person registers annually with the Department of Financial Services for this purpose;
- The card prominently states that it is not insurance;
- The person provides evidence to the department that the discounts are authorized and the person has a contract with each provider; and
- The discounts or access offered is not misleading, deceptive, or fraudulent.

Registration is \$50 per year per registrant. A registrant must designate an agent for purposes of service of process. The committee substitute provides a procedure for service on the Secretary of State if there is no agent or address for service of process available. The Department of Financial Services is provided with rulemaking authority to implement the provisions. A person who violates these provisions commits a misdemeanor of the first degree. If a person has been convicted under these provisions previously two or more times, the person commits a felony of the third degree. All other remedies under law are also still available.

#### **Effective Dates (Section 21)**

Sections 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, and 17 of the committee substitute take effect October 1, 2004. The remaining sections of the committee substitute take effect July 1, 2004.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

The committee substitute raises the game promotion filing fee to \$150 from \$100 for operators of game promotions in which the total value of the prizes offered is greater than \$5,000. The committee substitute also provides for a \$50 annual registration fee for health-related discount card operators.



**B. Private Sector Impact:**

- A business will have the option of subscribing a business number to the state's "no sales solicitation calls" listing.
- Ballroom dance studio operators, pawnbrokers, and sellers of travel may face increased administrative fines or civil penalties for violations of their respective laws if the violation is committed against a senior citizen or a handicapped person.
- Petroleum businesses will have less to report to the Department of Agriculture and Consumer Services when remitting the petroleum inspection fee.
- Motor vehicle repair shop employees may have access to financial assistance to take training courses in motor vehicle repair.
- Independent agents acting on behalf of sellers of travel will be required to submit copies of any contracts the agents have with sellers of travel.
- An amusement ride owner would pay a fee depending on the size of the amusement ride, from \$35 to \$140, for an inspection certificate if the owner moves a permanent ride from one location to another within a permanent park.
- Health-related discount card operators will be required to register with the Department of Financial Services and pay an annual fee of \$50.

**C. Government Sector Impact:**

The committee substitute includes the following appropriations:

- \$100,000 to be administered through an authorized program of the Department of Agriculture and Consumer Services established to provide financial assistance to motor vehicle repair shop employees to take courses of study in motor vehicle repair;
- \$100,000 for a consumer education pilot program to be operated by the Department of Agriculture and Consumer Services;
- \$100,000 to the Department of Agriculture and Consumer Services for marketing to the public the department's complaint-assistance services; and
- \$255,391 for seven full-time-equivalent positions within the Department of Agriculture and Consumer Services to support administration of unregulated complaints.

The Department of Financial Services will incur the expense of adopting rules for the registration of health-related discount card operators.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---

Bill No. CS for SB 1314

Amendment No. \_\_\_\_\_



172084

①

Senate

CHAMBER ACTION

House.  
.  
.  
.  
.  
.**AGRICULTURE**DATE: 4/8/04  
TIME: 11:30 AM

Senator Bennett moved the following amendment:

**Senate Amendment (with title amendment)**On page 8, line 17, through page 15, line 31, delete  
those lines

(Redesignate subsequent sections.)

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 1, line 17, through page 2, line 10, delete  
those lines

and insert:

report; amending s.

(2)

Bill No. CS for SB 1314

Amendment No. \_\_\_\_\_



293156

## CHAMBER ACTION

SenateHouse.  
.  
.  
.  
.  
.  
.

AGRICULTURE

DATE: 4/9/04  
TIME: 4:30 PM

Senator Alexander moved the following amendment:

**Senate Amendment (with title amendment)**

On page 46, line 15, before the word "rules"

insert: material terms of the

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

On page 4, line 10, after the semicolon

insert:

revising a requirement that game rules and  
 regulations be published in advertising copy to  
 instead require publication of the material  
 terms of such rules and regulations;

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)



BILL: SB 3058

SPONSOR: Senator Aronberg

SUBJECT: Purchase of Cats and Dogs

DATE: April 6, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein 	Poole 	AG	
2.			RI	
3.			CM	
4.				
5.				
6.				

## I. Summary:

A person who buys a puppy or kitten has certain rights as a consumer. This bill provides further consumer protection by requiring that any cat or dog offered for sale be accompanied by an animal-purchase disclosure, which is a certificate that contains certain information about the animal. It prohibits a pet dealer to possess a dog or cat that is less than eight weeks old if the dealer is not the breeder of the animal. It requires a pet dealer to provide veterinary care for an animal returned due to illness or disease and allows that care to include euthanasia.

If a cat or dog is returned because a veterinarian has determined that, at the time of sale, the animal was unfit for purchase due to illness or disease, reimbursement of veterinary costs may not exceed 150 percent of the purchase price of the animal. The bill deletes a provision that permits a purchaser to waive his or her right to return a dog or cat for congenital or hereditary disorders. It requires the consumer to notify and present to the pet dealer a veterinarian's determination of the unfitness of an animal within seven days, rather than two days after purchase. The written certification of unfitness must be presented to the pet dealer no later than 10 business days, rather than 3 business days after being received by the consumer.

The bill allows a consumer to initiate an action in court if a pet dealer fails to make a reimbursement, refund, or exchange within ten business days after notification by the consumer that an animal has been declared unfit for sale. It prohibits a pet dealer to state, promise, or represent to a consumer that a dog is registered, or capable of being registered, with an animal pedigree registry organization unless the pet dealer provides the consumer with the documents for registration within 120 days following the date of sale.

This bill amends section 828.29 of the Florida Statutes.

## **II. Present Situation:**

Many people want to enjoy the companionship of cats and dogs. The demand for pets has created an industry that has experienced problems, and in response, some states have enacted “pet lemon laws.” Chapter 828, Florida Statutes, requires cats and dogs offered for sale in Florida to be accompanied by an official certificate of veterinary inspection. The animal must have received certain vaccinations and health tests and it must be at least eight weeks of age. The health certificate is valid for 30 days. All dogs and cats offered for sale and copies of certificates held by the seller and veterinarian are subject to inspection by the Department of Agriculture and Consumer Services, the United States Department of Agriculture, any law enforcement officer, any agent of a county, or the agent of any society or association for the prevention of cruelty to children or animals.

If, within 14 days following the sale by a pet dealer, a licensed veterinarian determines that the pet was unfit for purchase due to illness or disease, there are several options available to the consumer, which include the right to exchange the animal, receive a refund of purchase price, sales tax and, in some cases, certain veterinary costs. A consumer may sign a waiver relinquishing his or her right to return the dog or cat for congenital or hereditary disorders. In the case of such waiver, the consumer has 48 normal business hours, excluding weekends and holidays, in which to have the animal examined by a licensed veterinarian of the consumer’s choosing. If the veterinarian certifies that, at the time of sale, the dog or cat was unfit for purchase due to a congenital or hereditary disorder, the pet dealer must either allow the consumer to return the animal and receive a refund of the purchase price including sales tax or exchange the animal for a dog or cat of the consumer’s choice of equivalent value.

## **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 828.29, F.S., to:

- Define the term “under the direction of a veterinarian” to mean that a licensed doctor of veterinary medicine is on the premises at the time that tests, vaccines, and anthelmintics required by this section are administered.
- Require that any cat or dog offered for sale must be accompanied by an animal-purchase disclosure.
- Define the term “animal-purchase disclosure” to mean a legible certificate containing specified information for dogs and for cats.
- Prohibit a pet dealer to possess a dog or cat that is less than eight weeks old if the dealer is not the breeder of the animal.
- Prohibit a pet dealer from refusing to reimburse veterinary costs because the consumer did not use a veterinarian designated by the pet dealer.
- Require a pet dealer to provide veterinary care to an animal that is returned due to illness, disease, or a congenital or hereditary condition.
- Provide that reimbursement of veterinary costs may not exceed 150 percent of the purchase price of the animal.
- Delete a provision that permits a purchaser to waive his or her right to return a dog or cat for congenital or hereditary disorders.

- Require the consumer to notify and present to the pet dealer a veterinarian's determination of the unfitness of an animal within seven days, rather than two days after purchase.
- Require the written certification of unfitness to be presented to the pet dealer no later than 10 business days, rather than 3 business days after being received by the consumer.
- Require the pet dealer to post a notice in a conspicuous location on the cage of each dog or cat indicating the state where the dog or cat was bred and brokered.
- Provide that any agreement or contract by a consumer to waiver of any right of the purchase is void.
- Provide that a consumer may initiate an action in court if a pet dealer fails to make a reimbursement, refund, or exchange within ten business days after notification by the consumer that an animal has been declared unfit for sale.
- Prohibit a pet dealer to state, promise, or represent to a consumer that a dog is registered, or capable of being registered, with an animal pedigree registry organization unless the pet dealer provides the consumer with the documents for registration within 120 days following the date of sale.
- Entitle the consumer to retain the animal and receive a partial refund of 75 percent of the purchase price if a pet dealer fails to provide the documents necessary for registration within 6 months.
- Provide penalties for violations of this act.

**Section 2.** Provides that this act shall take effect July 1, 2004.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services has indicated that there is no fiscal impact from this proposed legislation.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---



# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1418

SPONSOR: Senators Aronberg and Campbell

SUBJECT: Cruelty to Animals/Bovines

DATE: April 12, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner <i>[Signature]</i>	Poole <i>[Signature]</i>	AG	
2.			CJ	
3.				
4.				
5.				
6.				

## I. Summary:

This bill defines the term "bovine animal" and makes the exhibition sport known as "bulltailing" a felony of the third degree. It also makes simulated or bloodless bullfighting a second degree misdemeanor.

This bill substantially amends section 828.121 of the Florida Statutes.

## II. Present Situation:

It has been reported that a sport known as "bulltailing" is being conducted in Florida. From information gathered, the activity consists of two horse mounted contestants chasing a bull up and down an oblong arena, competing to flip the animal over by using its tail.

Presently it is misdemeanor without specification of degree to engage in a simulated or bloodless bullfight.

## III. Effect of Proposed Changes:

**Section 1.** Defines the term "bovine animal" to mean an animal of the subfamily bovine and includes, but is not limited to, a steer, calf, bull, ox, heifer, or cow.

It bans a person from intentionally dragging or felling by the tail a bovine animal in an organized sports exhibition and makes a violation a felony of the third degree.

Makes a violation of the prohibition against simulated or bloodless bullfighting exhibitions a misdemeanor of the second degree.

**Section 2.** Provides that this act shall take effect July 1, 2004.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill creates a felony penalty for participating in bulltailing events.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---

Bill No. SB 1418

Amendment No. \_\_\_\_\_



835934

①

## CHAMBER ACTION

SenateHouse.  
.  
.  
.  
.  
.

APPROPRIATE  
DATE: 4/12/04  
TIME: 9:45AM

Senator Aronberg moved the following amendment:

**Senate Amendment (with title amendment)**

On page 1, lines 21-28, delete those lines

and insert:

(3) A person may not intentionally drag by the tail or  
fell by the tail a bovine animal as an organized sport  
exhibition, also known as "bulltailing."

(4) (a) A person who violates subsection (2) commits a  
misdemeanor of the second degree, punishable as provided in s.  
775.082 or s. 775.083.

(b) A person who violates subsection (3) commits a  
felony of the third degree, punishable as provided in s.  
775.082, s. 775.083, or s. 775.084.

(5) This section does not prohibit or otherwise  
restrict recognized rodeo or animal husbandry and training  
techniques or practices that are not otherwise prohibited by  
general law.

Bill No. SB 1418

Amendment No. \_\_\_\_\_



835934

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

On page 1, line 7, after the semicolon,

insert:

providing clarification regarding techniques or  
practices that are not prohibited;

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1394

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Smith

SUBJECT: Limitation of Civil Liability

DATE: April 12, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Fav/CS
2.	Matthews	Lang	JU	Fav/1 Amendment
3.	Oxamendi	Imhof	RI	Favorable
4.	Weidenbenner <i>W</i>	Poole <i>JP</i>	AG	
5.				
6.				

## I. Summary:

The bill bars a claim for damages arising from personal injury or wrongful death against a manufacturer, distributor, or seller of foods or nonalcoholic beverages if the claim is premised upon a person's weight gain or obesity, or a health condition related to weight gain or obesity, resulting from long-term consumption of such foods or nonalcoholic beverages. The limitation on such claims does not bar a claim otherwise available under law against a manufacturer, distributor, or seller of foods or nonalcoholic beverages if such person failed to disclose statutorily required nutritional content information or provided materially false or misleading information to the public.

This bill would take effect up becoming a law and shall apply to all claims filed on or after that date.

This bill creates section 768.37, Florida Statutes.

## II. Present Situation:

### Obesity

Obesity is a serious public health threat that manifests itself in diseases and chronically disabling conditions such as diabetes, coronary heart disease and high blood pressure. The Surgeon General has noted that the number of deaths associated with obesity is nearly 300,000 per year in the United States.<sup>1</sup> According to a recent study by the Centers for Disease Control and Prevention (CDC), between 1971 and 2000, the daily caloric intake of Americans rose by more

<sup>1</sup> See John Alan Cohan, "Obesity, Public Policy, and Tort Claims Against Fast-Food Companies," 12 Widener L.J. 103 (2003).

than seven percent on average for men and 20 percent for women, and a greater portion of the extra calories was obtained from carbohydrates.<sup>2</sup> The consumption of food away from home, salty snacks, soft drinks, pizza, and portion size have increased. Although the study found that the percentage of fat in American diets has decreased, the study found that, during that 30-year period, individuals were consuming relatively the same amount of fat because their overall caloric intake increased. Researchers also found that during this period national restaurant chains significantly expanded their serving portions. In a separate study, the CDC found that Americans are starting to exercise more, but that the increase is not significant enough to improve health.<sup>3</sup>

A recent government study released on March 9, 2004, by the Center for Disease Control, which studied causes of death indicated that poor diet including obesity and physical inactivity (400,000) is one of the top 10 most common causes of mortality (second only to tobacco-related deaths at 435,000 annually) in 2000.

On October 15, 2003, the Governor issued Executive Order No. 03-196 creating the Task Force on the Obesity Epidemic to make recommendations regarding the problem of overweight and obesity in Florida. The February 2004 report of the Task Force found that in 2000 more than 6.5 million adults were overweight or obese in Florida.<sup>4</sup> Obesity-related medical expenditures for adults in Florida totaled over \$3.9 billion.<sup>5</sup> The Task Force report includes 22 recommendations.

### **Federal Nutrition Labeling Requirements**

The Nutrition Labeling and Education Act of 1990 (NLEA)<sup>6</sup> requires labeling of the following foods sold at retail, unless otherwise exempt:

- The serving size;
- The number of servings per container;
- The total number of calories derived from any source and derived from fat;
- The amount of total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and total protein per serving.<sup>7</sup>

The NLEA, and final regulations to implement the NLEA, provide a number of exemptions for retail foods.<sup>8</sup> The exemptions from these nutrition labeling requirements include foods served or sold in establishments that serve food for immediate consumption, such as restaurants, schools, cafeterias, trains, airplanes, bakeries, and delicatessens, or that are sold for use only in such establishments.<sup>9</sup> Restaurants are exempt from most, but not all, of NLEA's nutrition and health labeling requirements. Although the NLEA provides for federal preemption of state and local requirements that are not identical to the federal requirements for restaurant foods to bear

<sup>2</sup> "Trends in Intake of Energy and Macronutrients - United States, 1971—2000," Centers for Disease Control, Morbidity and Mortality Weekly Report, 53(04), pp. 80-82, February 6, 2004.

<sup>3</sup> "Prevalence of No Leisure-Time Physical Activity—35 States and the District of Columbia, 1988—2002," Centers for Disease, Control Morbidity and Mortality Weekly Report, 53(04), pp. 82-86, February 6, 2004.

<sup>4</sup> "Obesity in Florida," Report of the Governor's Task Force on the Obesity Epidemic, February, 2004.

<sup>5</sup> *Id.*

<sup>6</sup> See Nutrition Labeling and Education Act of 1990 (NLEA), Pub.L. 101-535, 104 Stat. 2353 (Nov. 8, 1990), 21 U.S.C. s. 343(q).

<sup>7</sup> See 21 U.S.C. § 343(q)(1)(A)-(E).

<sup>8</sup> See 21 CFR 101.9(j).

<sup>9</sup> See 21 CFR 101.9(j)(2).

nutrition labeling in specified areas of food labeling, the NLEA provides that states would not be preempted for foods that are exempt from the federal requirements.<sup>10</sup> States are free to apply nutrition labeling and claims requirements to claims on restaurant menus.

### **Litigation Against Fast-Food Companies**

Recently, as a result of the successful tort litigation against tobacco product manufacturers, litigation is being filed against fast-food companies alleging health-related injuries such as diabetes, coronary heart disease, high blood pressure, and elevated cholesterol due to weight gain. Generally, such cases have alleged deceptive or misleading trade practices, as an expansion of the products liability cases involving tobacco or alcohol. It has been suggested that fast food is a pleasure producing product such as tobacco and alcohol, which causes obesity that leads eventually to other chronic health problems.<sup>11</sup> The producers and sellers of fast-food products are alleged to have engaged in targeted advertising. While conceding that, unlike tobacco or alcohol, fast food is not physically addictive, such lawsuits in some cases allege that fast food is “intrinsically harmful.”<sup>12</sup> The issue of liability in a fast-food lawsuit raises difficult issues of legal causation and foreseeability of harm.

A prominent lawsuit was filed in New York by two plaintiffs who alleged that the plaintiffs, two minors, suffered injuries to their health by becoming obese due, in part, to the consumption of fast food at McDonalds.<sup>13</sup> The parents of the minors filed a class action lawsuit against the defendants. The plaintiffs alleged that the practices of McDonalds in making and selling their products are deceptive and that the deception has caused the minors who consumed McDonalds’ products to injure their health from obesity. The plaintiffs had become overweight and had developed diabetes, coronary heart disease, high blood pressure, elevated cholesterol intake, and other adverse health effects. The judge stated that the “opinion is guided by the principle that legal consequences should not attach to the consumption of hamburgers and other fast-food fare unless consumers are unaware of the dangers of eating such food.”<sup>14</sup> The judge noted that “if consumers know (or reasonably should know) the potential ill health effects of eating at McDonalds, they cannot blame McDonalds if they, nonetheless, choose to satiate their appetite with a surfeit of supersized McDonald products.”<sup>15</sup> The United States District Court for the Southern District of New York held that a retail food outlet has a duty to warn consumers of dangerous or unhealthy contents of its food products only if a reasonable consumer would be

<sup>10</sup> See 21 U.S.C. s. 403(a)(4) and 21 U.S.C. s. 403(a)(5). *But see Public Citizen v. Shalala*, 932 F. Supp 13, at 16-17. (D.C. 1996). NLEA labeling rules must also apply to *nutrient content and health claims* that are made on restaurant menus. An attempt by the U.S. Food and Drug Administration to exempt restaurants from the nutrition and health claim labeling requirements in 21 U.S.C.A. s. 343r (l), (2)(A)(i)-(ii), (vi) from which restaurants were not expressly exempted, was held invalid. *Nutrient content claims* are those claims that describe the amount of a nutrient in the food such as “sodium free” or “low fat.” General provisions for the use of nutrient content claims have been established in 21 CFR 101.13. *Health claim* as defined in 21 CFR 101.14 means any claim made on the label or in labeling of a food, including a dietary supplement, that expressly or by implication, including third-party references, written statements, symbols, or vignettes, characterizes the relationship of any substance to a disease or health-related condition. These claims may not be made unless they are defined by FDA in regulations.

<sup>11</sup> See John Alan Cohan, “Obesity, Public Policy, and Tort Claims Against Fast-Food Companies,” 12 Widener L.J. 103 (2003).

<sup>12</sup> *Id.* at 111.

<sup>13</sup> *Pelman v. McDonald’s Corporation*, 237 F.Supp.2d 512 (S.D.N.Y. 2003).

<sup>14</sup> *Id.* at 517.

<sup>15</sup> *Id.* at 518.

unaware of these dangerous and unhealthy characteristics of the food based on the ordinary knowledge of the community.<sup>16</sup> The court granted defendants motion to dismiss all complaints.<sup>17</sup>

### III. Effect of Proposed Changes:

**Section 1.** This bill creates s. 768.37, F.S., to bar a claim for damages arising from personal injury or wrongful death against a manufacturer, distributor, or seller of foods or nonalcoholic beverages if the claim is premised upon a person's weight gain or obesity, or a health condition related to weight gain or obesity, resulting from long-term consumption of such foods or nonalcoholic beverages. For purposes of this section, "long-term consumption" is defined to mean the cumulative effect of multiple instances over a period of time and not the effect of a single or isolated instance. The limitation on such claims does not bar a claim under any other provision of law against a manufacturer, distributor, or seller of foods or nonalcoholic beverages if such person has failed to provide nutritional content information as required by any applicable state or federal law or has provided materially false or misleading information to the public.

**Section 2.** This bill would take effect up becoming a law and would apply to all claims filed on or after that date.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

Article I, s. 21 of the Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay." The test for assuring the right of access to the courts was declared in *Kluger v. White* in which the Florida Supreme Court held that:

Where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 543.



Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.<sup>18</sup>

Because the bill extends immunity from civil liability to potential defendants, it raises questions about possible infringements on the right of access to the courts. A litigant may argue that the limitation denies the litigant of his or her access to courts. It does not appear that a Florida court has ever addressed the issue of tortious liability for adverse health effects due to the long-term consumption of foods or nonalcoholic beverages. To the extent that such a tort action may be pursued under Florida law, the limitation would have to meet the constitutional test established by the Florida Supreme Court in *Kluger v. White*. The Legislature would have to: (1) provide a reasonable alternative remedy or commensurate benefit, or (2) make a legislative showing of overpowering public necessity for the abolishment of the right and no alternative method of meeting such public necessity.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

A manufacturer, distributor, or seller of foods or nonalcoholic beverages may enjoy lower insurance costs to the extent the bill limits the liability of such persons.

##### **C. Government Sector Impact:**

None.

#### **VI. Technical Deficiencies:**

When referring to the cumulative effect of consumptive actions taken by a potential defendant over a long period of time, the bill misuses the word “instance.” The general usage of the term *instance* is with reference to an example or a step in a process. If the intent is to refer to an occurrence or happening, then the word *incident* or *event* is the more appropriate term. Additionally, the bill defines “long-term consumption” to exclude the effect of a *single* or *isolated* instance. No substantive difference exists between a *single* versus an *isolated* event or act. However, if the intent is to refer to a series of *unrelated* acts or events, then the suggested phrase should read as “*a single or a series of isolated incidents.*” See page 1, lines 25-27.

#### **VII. Related Issues:**

Federal legislation (H.R. 339 and S. 1428) was introduced in Congress to prohibit obesity-related lawsuits against food sellers and manufacturers. Only the House Resolution is advancing on the

<sup>18</sup> See *Kluger v. White*, 281 So.2d 1 (1973), at 4.

calendar. On March 10, 2004, the House passed the legislation by a vote of 276 – 139. It was received in the Senate on March 11, 2004, and it was read the second time on March 26, 2004, and placed on the Senate Legislative Calendar under General Orders Calendar No. 463. The House Resolution shields the manufacturer, distributor, or seller of a food or non-alcoholic beverage product intended for human consumption from civil liability in any state or federal actions for claims based on a person's weight gain, obesity, or any other health condition associated with weight gain or obesity relating to the consumption of such products. The action does not apply if the manufacturer or seller of a qualified product knowingly and willfully violated a Federal or State statute applicable to the manufacturing, marketing, distribution, advertisement, labeling, or sale of the product, and the violation was a proximate cause of injury related to a person's weight gain, obesity, or any health condition associated with a person's weight gain or obesity ; or the action is one for breach of express contract or express warranty in connection with the purchase of a qualified product.

#### **VIII. Amendments:**

Amendment #1 by Judiciary:

Revises the last sentence of the bill to clarify that the immunity from liability does not bar a claim for damages *if such claim is available* under any other provision of law for failure to disclosure statutorily required nutritional content information or for providing materially false or misleading information to the public.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---

Bill No. CS for SB 1394Amendment No. 1

324054

## CHAMBER ACTION

SenateHouse.  
.  
.  
.  
.  
.

*THIS AMENDMENT WAS PREVIOUSLY  
ADOPTED IN ANOTHER COMMITTEE*

The Committee on Judiciary recommended the following  
amendment:

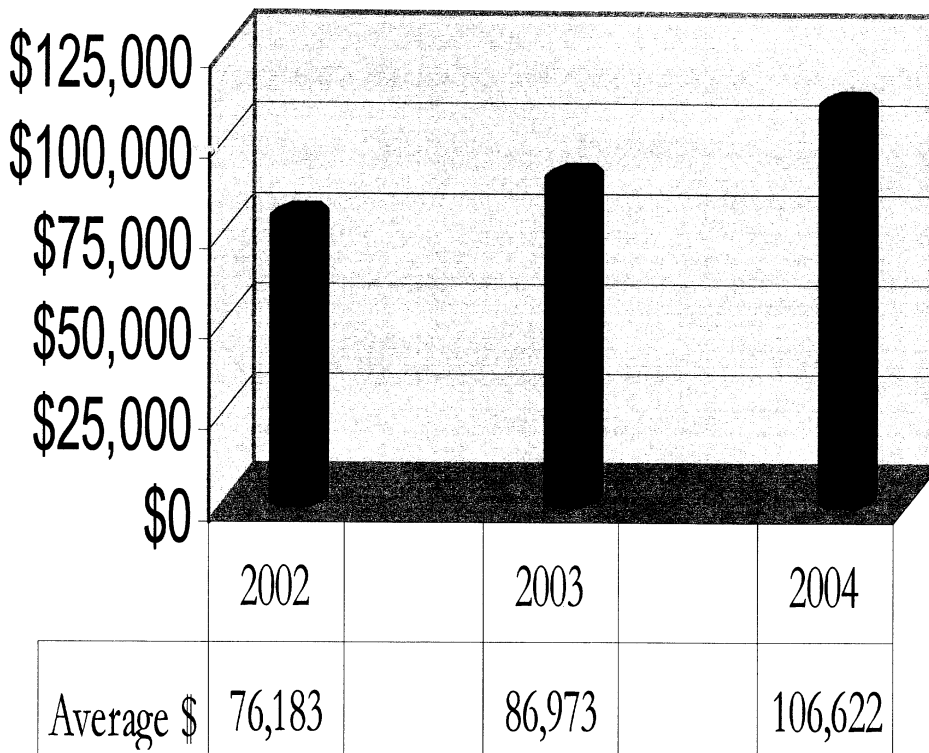
**Senate Amendment**

On page 1, line 27, through  
page 2, line 3, delete those lines

and insert: of a single or isolated instance. Such limitation  
on civil liability shall not bar a claim for damages if  
otherwise available under any other provision of law against a  
manufacturer, distributor, or seller of foods or nonalcoholic  
beverages if such manufacturer, distributor, or seller has  
failed to provide nutritional content information as required  
by any applicable state or federal law or regulation or has  
provided materially false or misleading information to the  
public.



## Average Fuel Costs





# FUEL TAX SURVEY SUMMARY

(Farmer Comments)

## **What impact has rising fuel costs had on your operation?**

- Fuel costs have negatively affected my overall profitability. Because of the economy of scale, larger producers won't be hurt as much as smaller farmers.
- Suppliers who are delivering to us, even the bottled water for the office, impose fuel surcharges.
- More out-of-pocket expense. Indirect fertilizer and chemical prices up. Less on the bottom line.
- Fuel costs are very significant. They have pushed up the price of all inputs by at least 10% in the past twelve months.
- It is a cost that we cannot pass on. It affects my bottom line. It is hard to change negotiated prices during the middle of a vegetable season.
- Cost of everything goes up (fertilizer, herbicides, insecticides, trucking and harvesting expenses).

## ***Are you able to pass increased operational costs of rising fuel prices on to consumers?***

- No. The majority of producers just said NO.
- No. Not as the bottom man.
- Not yet. Wait for a few to go out of business, then we can raise.
- No. I cannot pass any increases onto consumers. We are getting the same per unit that we received in the early 70's.
- No. Sugarcane is fair price determination by USDA.



# FUEL TAX SURVEY SUMMARY

(Farmer Comments)

***How have rising fuel costs affected other related agricultural input costs? (i.e., fertilizer, chemicals, feed, transportation, electricity)***

- Yes. Fertilizer, feed, chemicals, transportation, freight and other related costs have been greatly affected by rising fuel costs.
- Farmers are indicating an overall increase in fertilizer and chemical costs of about 20-25% due to higher fuel costs. (Last year, fertilizer was approximately \$180 per ton; today it is in excess of \$220 per ton.)
- Producers are seeing surcharges of \$30-40 added to their feed bill due to increased fuel costs. (This is a good example of an input cost that has increased because of higher fuel costs and this increase cannot be passed on.)
- We are seeing bag feed costs increase by \$1.50 to \$2.00 per 50 pound bag. The cattle ranchers in Florida have seen \$150 to \$200 increases in hauling fees due to high fuel costs.

Example: One rancher will ship 800 loads a year, which would increase his hauling, fees \$120,000 over last year's fees.

Dairy farmers are currently paying a hauling surcharge on their milk transports.

- Everything includes a fuel surcharge.
- Fertilizer up 20%; Chemicals up 25%
- Ammonium Nitrate has never been this high. Fuel surcharges up. Others pass these costs to farmers and we have no one else to pass them to.
- Has increased all of the above and do not know how much.